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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,552	03/22/2001	Henry H. Wheeler JR.	7014-101	4477
167 7590 05/16/2007 FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			EXAMINER SERGENT, RABON A	
			ART UNIT 1711	PAPER NUMBER
			MAIL DATE 05/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/814,552

Applicant(s)

WHEELER ET AL.

Examiner

Rabon Sergent

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17, 37-44, 46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-17 and 47 is/are allowed.
- 6) ☒ Claim(s) 37-44 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 37, 39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Adam et al. ('677).

Patentees disclose a ditch liner, wherein a porous blanket is impregnated with a polyurethane composition containing a filler material, including aramid fibers. See abstract and

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column 3, line 59. Since the ditch liner is intended to contain fluids, such as water, the position is taken that the pores of the blanket have been filled with the polyurethane material. Though patentees fail to disclose the porous blanket as specifically being a geotextile, the position is taken in view of the disclosed application of the liner that the porous blanket functions as a geotextile and that one of ordinary skill in the art would immediately envisage the blanket as being a geotextile. Lastly, since the instant claims are drawn to the liner article, the means by which the polyurethane has been applied (spraying) does not distinguish the claims from the prior art, absent a showing of distinction attributable to the method.

3. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adam et al. ('677).

As aforementioned within paragraph 2, patentees disclose a ditch liner, wherein a porous blanket, considered to meet applicants' geotextile, is impregnated with a polyurethane composition containing a filler material, including aramid fibers. Patentees fail to disclose applicants' claimed polyurethane thickness; however, the selection of the claimed thickness amounts to nothing more than the optimization of a result effective variable. Accordingly, it would have been obvious to apply the polyurethane at virtually any thickness adequate for the intended purpose of forming a liner.

4. The examiner has considered applicants' response with respect to claims 37-40, and it is noted that applicants' arguments and remarks are directed to methods of application or production. However, the rejected claims are drawn to an article; therefore, arguments and/or amendments drawn to processing steps are insufficient to distinguish the claims from the prior art, absent some showing or rationale that establishes that the process steps yield a patentably

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distinct article. The examiner sees no patentable distinction between the disclosed liners and those claimed.

5. Claims 37, 39-41, and 43-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Markusch et al. ('407).

Patentees disclose a liner, wherein a geotextile is impregnated with a polyurethane composition containing a filler material, including aramid fibers. See abstract and column 7, line 26. Since the liner is intended to contain fluids, such as water, the position is taken that the pores of the geotextile have been filled with the polyurethane material. Patentees further disclose at column 8, lines 5+ that the polyurethane may be applied to the geotextile by spraying, and that the geotextile may be placed on the surface to be treated (i.e.; ditch or canal), then sprayed with the polyurethane.

6. Claims 38 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markusch et al. ('407).

As aforementioned within paragraph 5, patentees disclose a liner, wherein a geotextile is impregnated with a polyurethane composition containing a filler material, including aramid fibers. Though patentees disclose that the thickness of the composite can be varied over a wide range, patentees fail to disclose applicants' claimed polyurethane thickness; however, the selection of the claimed thickness amounts to nothing more than the optimization of a result effective variable. Accordingly, it would have been obvious to apply the polyurethane at virtually any thickness adequate for the intended purpose of forming a liner.

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7. Applicants' response has been considered; however, the amendments and remarks are not considered to distinguish the claims from the prior art in view of the aforementioned disclosure within column 8.

8. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markusch et al. ('407) in view of White ('245).

As aforementioned, Markusch et al. disclose a liner for containing fluids, wherein a geotextile is impregnated with a polyurethane composition containing a filler material, including aramid fibers. See abstract and column 7, line 26. Patentees further disclose at column 8, lines 5+ that the polyurethane may be applied to the geotextile by spraying.

9. Markusch et al. are silent with respect to the process steps of claim 46; however, in the production of liners and lined containers, the position is taken that such process steps would have been obvious at the time of invention. This position is supported by the teachings of White. White discloses at column 1, lines 45+ and column 3, lines 62+ the adhesive bonding of geotextiles to substrates to produce liners for tanks, and White further stresses the need to provide a means for gas to escape from between the liner and the substrate walls as the tank is filled. White further disclose prior art methods of installing liners within tanks, wherein the perimeter edge of the liner is mechanically attached to the tank, and it is noted that such a connection would allow for the transmission of gas. Therefore, the position is ultimately taken that it would have been obvious to utilize a structurally superior liner, such as that produced by Markusch et al., in the production of tanks in accordance with the teachings of White and further to provide a means for the aforementioned gas to escape, such as by not sealing the perimeter of the geotextile with adhesive.


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10. The examiner has considered applicants' arguments, and the rejection has been drafted in response.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (571) 272-1079.


RABON SERGENT
PRIMARY EXAMINER

R. Sergent
May 14, 2007